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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,115	01/17/2002	Paul E. Carlson		1646

7590 03/15/2004  
William L. Kraye  
1771 Helen Drive  
Pittsburgh, PA 15216

EXAMINER

OSTRUP, CLINTON T

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/052,115	<b>Applicant(s)</b> CARLSON ET AL.	
	<b>Examiner</b> Clinton Ostrup	<b>Art Unit</b> 1614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-3 and 5-18 are pending in this application.

#### ***Priority***

Priority to Provisional Application Number 60/264,611, filed January 27, 2001 has been acknowledged.

#### ***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c). See: Declaration filed June 19, 2003, wherein an alteration has been made to George Bell's Residence and post office address.

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to **patentability** as defined in 37 CFR 1.56. See: the Declaration filed May 16, 2003, the Declaration filed June 19, 2003, and the Declaration filed January 17, 2003.

### **Response to Applicant's Arguments/Amendment**

#### **Notice of Non-Compliant Amendment**

The Notice of Non-Compliant Amendment, mailed October 18, 2003, appears to have been sent because Applicants included a list of the amended claims and a separate listing of all the claims. It appears the Notice of Non-Compliant Amendment, wherein Boxes 4(A-D) were checked, was based solely of the list of amended claims. The Office only requires only one listing of claims, regardless of whether the claims are being amended. This list should start on a separate page, list all claims that are, or

were, in the application, in ascending order, with the text of all claims under examination, a status identifier of each claim, and showing markings of any currently amended claims.

***Specification***

Applicant's amendment filed October 28, 2003, has made the objection of the specification moot. Therefore, the said objection has been withdrawn.

***Claim Objections***

Applicant's amendment filed October 28, 2003, has made the objection of claims 1, 3, 5, 7, 13, 14, and 16 moot. Therefore, the said objection has been withdrawn.

***Claim Rejections - 35 USC § 112***

Applicant's amendment filed October 28, 2003, has made the rejection of claim 17, under 35 U.S.C. 112, second paragraph, moot. Therefore, the said rejection has been withdrawn.

***Claim Rejections - 35 USC § 103***

Applicant's arguments and amendment filed October 28, 2003, to the rejection of claims 1-3 and 5-18 under 35 U.S.C. 103(a) have been fully considered; however, they are not found convincing. Therefore, the said rejection has been MAINTAINED for the reasons set forth in the Office Action mailed February 21, 2003 and those found below.

In response to applicant's argument that they are not concerned with achieving an improved cleansing composition, rather applicants' objective is to achieve a longer shelf life for haloacetamide microbial solutions, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior

art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the showing of the physical and chemical stability of haloacetamide in variously buffered acetate-free xanthate suspension) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Moreover, the instant claims are drawn to compositions, not methods of stabilizing compositions.

In regard to Applicants' argument that the Examiner has completely ignored Table 1 and the wording of applicants' claims, wherein claim 1 requires both sodium acetate and acetic acid, the examiner respectfully disagrees.

Gartner teaches stable, concentrated aqueous suspensions comprising 2,2-dibromo-3-nitilopropionamide (DBNPA) in the presence of a thixotrope, and teaches xanthan gum as an example of such thixotropic agents. The primary reference teaches the pH of said aqueous suspensions in a range from about 1 to about 4, a pH range which overlaps that of the range claimed instantly, and teaches that in general almost any acidifying agent may be used and specifically teaches acetic acid as an example of an acidifying agent. Miskiel et al teach that acetic acid and acid salts may be used as suitable and compatible acidulents, and sodium acetate would clearly be recognized by

a skilled artisan as a salt of acidic acid. Therefore, applicants' arguments have not been found convincing and the said rejection has been MAINTAINED.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3 and 5-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gartner 5,627,135 and further in view of Miskiel et al., 6,083,890.

Gartner teaches stable, concentrated aqueous suspensions comprising 2,2-dibromo-3-nitilopropionamide (DBNPA) in the presence of a thixotrope that exhibits Ellis-Plastic behavior, and teaches xanthan gum as an example of such thixotropic agents. The reference teaches the pH of said aqueous suspensions in a range from about 1 to about 4, a pH range that overlaps that of the range claimed instantly. See: abstract, col. 2, line2 25 – col. 3, line 63.

The primary reference teaches that DBNPA degrades at higher pHs and in general almost any acidifying agent may be used and specifically teaches acetic acid as an example of an acidifying agent. The reference teaches DBNPA in amounts, which overlap those as claimed instantly in claims 7, 8, 10-12, and 17. The reference teaches amounts of a suspending agent, which overlap the amounts of acetate-free xanthan gum as claimed instantly in claims 13-14. See: col. 4, line 45 - col. 6, line22; and claims 1-12.

Although he primary referenced teaches a stable, aqueous suspension of DBNPA in amounts claimed instantly in a thixotrope, such as xanthan gum, having a pH

which overlaps the pH claimed instantly, the primary reference lacks the acetate-free xanthan gum and sodium acetate as claimed instantly in claims 1-3 and 5-18.

Miskiel et al., teach an improved acidic cleaning composition comprising a low acetate xanthan gum as a rheological control agent, which exhibits greater, longer lasting stability and shelf life when compared to acidic cleaning compositions with xanthan gum.

The secondary reference teaches that xanthan gum is a well-known rheology modifier in cleansers, but it has the undesirable characteristic of not being able to maintain the viscosity of compositions having a low pH. However, Miskiel et al., have surprisingly and unexpectedly found that if the content of acetate in xanthan gum is at or below 1.2% there is a significant improvement in the viscosity stability of the acidic cleanser compositions.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the compositions of Gartner by substituting acetate-free xanthan gum for xanthan gum because of the reasonable expectation of obtaining an improved cleansing composition with superior viscosity and stability.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clinton Ostrup whose telephone number is (571) 272-0582. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (571) 272-0584. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Clinton Ostrup




Application/Control Number: 10/052,115  
Art Unit: 1614

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Examiner  
Art Unit 1614

A handwritten signature in black ink, appearing to be 'Fred Krass', written in a cursive style.

Frederick Krass  
Primary Examiner  
Art Unit 1614

A handwritten signature in black ink, appearing to be 'Fred Krass', written in a cursive style.